

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE PADULA,

Plaintiff,

v.

EBAY and MAXARMORY,

Defendants.

ORDER

21-CV-5391 (MKB) (SJB)

MARGO K. BRODIE, United States District Judge:

Plaintiff George Padula commenced the above-captioned action against Defendants eBay and Maxarmory on September 28, 2021, and filed an Amended Complaint on October 13, 2021, alleging breach of contract, fraud, violations of the New York General Business Law (“NYGBL”), violations of the consumer fraud and deceptive trade practices acts of each of the fifty States and the District of Columbia, and unjust enrichment. (Compl., Docket Entry No. 1; Am. Compl., Docket Entry No. 6.) On March 31, 2022, eBay and Maxarmory each filed a motion to compel arbitration and requested a stay pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1–16. (*See* eBay’s Mot. to Compel Arbitration, Docket Entry No. 27; Maxarmory’s Mot. to Compel Arbitration, Docket Entry No. 31.) On November 30, 2022, the Court referred Plaintiff’s motion to Magistrate Judge Sanket J. Bulsara for a report and recommendation, (Order dated Nov. 30, 2022.)

By report and recommendation dated December 29, 2022, Judge Bulsara recommended that that the Court grant Defendants’ motions to compel arbitration and stay proceedings pending the outcome of arbitration (“R&R”). (R&R 1, 6 –16, Docket Entry No. 40.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

II. Conclusion

For the foregoing reasons, the Court adopts the R&R, grants Defendants' motions to compel arbitration and stays all proceedings pending the outcome of arbitration.

Dated: 01/24/2023

Brooklyn, New York

SO ORDERED:

s/ MKB

MARGO K. BRODIE

United States District Judge